

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK  
CENTRAL ISLIP DIVISION

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IN RE

THOMAS MAFFETONE,

DEBTOR.

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CHAPTER 7

CASE NO. 8-19-72242-reg

JUDGE: Robert E. Grossman

MOTION DATE: June 10, 2019

MOTION TIME: 9:30 a.m.

**PLEASE TAKE NOTICE** that upon the annexed affirmation of Shari S. Barak, a member of the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Select Portfolio Servicing, Inc. as Servicer for The Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2005-55CB, Mortgage Pass-Through Certificates Series 2005-55CB (“Movant”) will move this Court as set forth below:

JUDGE: HON. Robert E. Grossman

RETURN DATE & TIME:

COURTHOUSE: United States Bankruptcy Court  
Alfonse M. D'Amato U.S. Courthouse  
290 Federal Plaza  
Central Islip, NY 11722

RELIEF REQUESTED: The proposed order will seek to vacate the automatic stay imposed by 11 U.S.C. § 362(a) generally described as 913 Sound Shore Road, Jamesport, NY 11947, pursuant to 11 U.S.C. § 362(d)(1) based upon the total debt due to Movant, resulting in Movant's lack of adequate protection with regard to the subject property.

**PLEASE TAKE FURTHER NOTICE**, that answering affidavits, if any, to the relief requested, must be served upon and received by Shapiro, DiCaro & Barak, LLC at their offices at One Huntington Quadrangle, Suite 3N05, Melville, NY 11747 and filed with the Clerk of the United States Bankruptcy Court for the Eastern District of New York at United States Bankruptcy Court, Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722 no later than seven (7) days prior to the return date of this motion.

Dated: April 30, 2019  
Melville, New York

\_\_\_\_\_/s/Shari Barak

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Shari S. Barak  
Managing Attorney  
Shapiro, DiCaro & Barak, LLC  
Attorneys for Select Portfolio Servicing, Inc. as  
Servicer for The Bank of New York Mellon, f/k/a  
The Bank of New York, as trustee, on behalf of the  
holders of the Alternative Loan Trust 2005-55CB,  
Mortgage Pass-Through Certificates Series 2005-  
55CB  
One Huntington Quadrangle, Suite 3N05  
Melville, NY 11747  
Telephone: (631) 844-9611  
Fax: (631) 844-9525

TO: SERVICE LIST

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CASE NO. 8-19-72242-reg

JUDGE: Robert E. Grossman

MOTION DATE: June 10, 2019

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**AFFIRMATION IN SUPPORT OF  
ENTRY OF AN ORDER GRANTING  
RELIEF FROM THE AUTOMATIC STAY**

Shari S. Barak, an attorney at law duly admitted to practice before the Courts of the State of New York and the U.S. District Court for the Eastern District of New York, hereby affirms the following to be true under penalty of perjury:

1. I am a member with the law firm of Shapiro, DiCaro & Barak, LLC, attorneys for Select Portfolio Servicing, Inc. as Servicer for The Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2005-55CB, Mortgage Pass-Through Certificates Series 2005-55CB (“Movant”), a secured creditor of Thomas Maffetone (“Debtor”). As such, I am fully familiar with the facts and circumstances of this case.

2. I make this Affirmation in support of the within request for an Order Granting Relief from the automatic stay, for cause, pursuant to 11 U.S.C. § 362(d)(1) and (2).

3. Jurisdiction is conferred on this Court by the provisions of 28 U.S.C. § 1334. This is a proceeding to terminate and annul the automatic stay and is therefore a “core” proceeding within the meaning of 28 U.S.C. § 157(b)(2).

4. Movant is a secured creditor of the Debtor pursuant to a note executed by Thomas Maffetone on August 11, 2005, whereby Thomas Maffetone promised to repay the principal amount of \$242,000.00 plus interest to America's Wholesale Lender (the "Note"). To secure the repayment of the Note, Thomas Maffetone granted Mortgage Electronic Registration Systems Inc (MERS) as nominee for America's Wholesale Lender a mortgage, which was duly recorded in the Suffolk County Clerk's Office on October 6, 2005 at Book M00021144 of Mortgages, page 993 (the "Mortgage," Note and Mortgage, collectively, as the "Loan"), encumbering real property located at 913 Sound Shore Road, Jamesport, NY 11947 (the "Property"). The Mortgage was transferred to The Bank of New York Mellon f/k/a The Bank of New York, as Trustee, on behalf of the holders of the Alternative Loan Trust 2005-55CB Mortgage Pass-Through Certificates Series 2005-55CB, and said transfer was memorialized by an Assignment of Mortgage executed on November 3, 2015 (the "Assignment of Mortgage"). The terms of the Loan were modified by agreement dated September 1, 2013 entered into by and between the Movant and the Debtor creating a new principal balance in the amount of \$235,043.83 (the "Loan Modification Agreement"). Copies of the Note, Mortgage, Loan Modification Agreement, and Assignment of Mortgage are annexed hereto as **Exhibit "A."**

5. Upon information and belief, the Debtor herein own(s) the Property.

6. Debtor filed a petition for relief under Chapter 7 of the U.S. Bankruptcy Code on or about March 27, 2019.

7. According to the Debtor's Statement of Intention, the Debtor intends to surrender the property. A copy of the Debtor's Chapter 7 Statement of Intentions is annexed hereto as **Exhibit "B."**

8. Debtor has failed to make current mortgage payments due to Movant under the terms of the Loan. As a result, the Mortgage remains due for the March 1, 2015 payment and each subsequent payment thereafter.

9. The amount of delinquency due as of April 2, 2019 under the Mortgage is as follows:

25 Defaulted Monthly Payments at \$732.03 each (March 2015 through March 2017)	\$18,300.75
15 Defaulted Monthly Payments at \$1,731.55 each (April 2017 through June 2018)	\$25,973.25
2 Defaulted Monthly Payments at \$2,341.29 each (July 2018 through August 2018)	\$4,682.58
8 Defaulted Monthly Payments at \$2,454.61 each (September 2018 through April 2019)	\$19,636.88
Misc. Fees	\$0.01
Late Charges	\$29.28
<b>Total Delinquencies</b>	<b>\$68,622.75</b>

10. A copy of the Relief from Stay-Real Estate and Cooperative Apartments ("Affidavit") is annexed hereto as **Exhibit "C."**

11. Moreover, in view of the total debt due to Movant and in light of the Debtor's failure to make payments, Movant is no longer adequately protected. The automatic stay must be vacated for cause pursuant to 11 U.S.C. § 362(d)(1).

12. As set forth in the Affidavit, as of April 2, 2019, the approximate debt due and owing to Movant equals \$302,405.06. The debt is accruing interest at a rate of 3% per annum.

13. Based upon the Debtor's Schedule D, the Property has an estimated fair value of approximately \$675,120.00. A copy of Debtor's Schedule D is annexed hereto as **Exhibit "D."** As indicated in paragraph 12 herein above, the total debt to Movant equals \$302,405.06.

14. Movant, according to the laws of the State of New York and the terms and conditions of the Mortgage, desires to continue and/or commence foreclosure proceedings with respect to the Property.

15. The Debtor, Debtor's Attorney, the Chapter 7 Trustee and the Office of the United States Trustee have each been duly served with the within Notice of Motion, Affirmation, Exhibits and proposed Order Vacating Stay, as more fully set forth in the annexed affidavit of mailing.

16. No prior application has been made for the relief requested herein.

17. The entity which has the right to foreclose is: The Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2005-55CB, Mortgage Pass-Through Certificates Series 2005-55CB by virtue of being the holder and owner of the note.



**SHAPIRO, DICARO & BARAK, LLC**

Attorneys for Select Portfolio Servicing, Inc. as Servicer  
for The Bank of New York Mellon, f/k/a The Bank of New  
York, as trustee, on behalf of the holders of the Alternative  
Loan Trust 2005-55CB, Mortgage Pass-Through  
Certificates Series 2005-55CB  
One Huntington Quadrangle, Suite 3N05  
Melville, NY 11747  
Telephone: (631) 844-9611, Fax: (631) 844-9525  
**Shari S. Barak**

**UNITED STATES BANKRUPTCY COURT  
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CASE NO. 8-19-72242-reg

JUDGE: Robert E. Grossman

MOTION DATE: June 10, 2019

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**AFFIDAVIT OF SERVICE BY MAIL**

STATE OF NEW YORK     )  
                                  )ss:  
COUNTY OF MONROE     )

I, Lora Mosher, being sworn, say, I am not a party to this action; I am over 18 years of age, I reside in Rochester, New York.

On April 30, 2019 I served the within Notice of Motion, Affirmation in Support, Exhibits and Proposed Order Granting Relief from the Automatic Stay upon:

TO: Debtor  
Thomas Maffetone  
378 Manor Lane  
Riverhead, NY 11901

Attorney for Debtor  
John Gonzalez  
Law Office of John Gonzalez P.C.  
3237 Route 112  
Bldg 6, Suite 10  
Medford, NY 11763



Trustee  
Robert L. Pryor  
Pryor & Mandelup LLP  
675 Old Country Road  
Westbury, NY 11590

U.S. Trustee  
Long Island Federal Courthouse  
560 Federal Plaza - Room 560  
Central Islip, NY 11722

at the addresses designated by the foregoing individuals for that purpose by depositing a true copy of same enclosed in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Date April 30, 2019

Lora M

Lora Mosher  
Bankruptcy Assistant  
Shapiro, DiCaro & Barak, LLC  
Attorneys for Select Portfolio Servicing, Inc.  
as Servicer for The Bank of New York  
Mellon, f/k/a The Bank of New York, as  
trustee, on behalf of the holders of the  
Alternative Loan Trust 2005-55CB,  
Mortgage Pass-Through Certificates Series  
2005-55CB  
175 Mile Crossing Boulevard  
Rochester, New York 14624  
Telephone: (585) 247-9000  
Fax: (585) 247-7380

Sworn to before me this  
30 day of April, 2019

[Signature]  
Notary Public

TAMARA MONTESANO  
Notary Public, State of New York  
No. 01MO6180767  
Qualified in Steuben County  
Commission Expires Jan. 14, 2020

UNITED STATES BANKRUPTCY COURT  
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**ORDER GRANTING RELIEF FROM  
THE AUTOMATIC STAY**

UPON consideration of the Application of Select Portfolio Servicing, Inc. as Servicer for The Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2005-55CB, Mortgage Pass-Through Certificates Series 2005-55CB, ("Movant") dated April 30, 2019, and it appearing that neither the Debtor nor the Chapter 7 Trustee nor the U.S. Trustee have opposition to the motion brought by Movant, for relief from the automatic stay, and with good cause appearing therefore, it is

**ORDERED** that the automatic stay, heretofore in effect pursuant to 11 U.S.C. § 362(a), is hereby vacated for cause pursuant to 11 U.S.C. § 362(d) as to Movant, its agents, assigns or successors in interest, so that Movant, its agents, assigns or successors in interest, may take any and all actions pursuant to the Note and Mortgage and applicable state law including but not limited to foreclose its mortgage on premises known as 913 Sound Shore Road, Jamesport, NY 11947 without further application to this Court, and it is further

**ORDERED** that in the event this case is converted to a case under any other chapter of the U.S. Bankruptcy Code, this Order will remain in full force and effect; and it is further

**ORDERED** that the Movant shall promptly report and turn over to the Chapter 7 Trustee any surplus monies realized by any sale of the Property.